



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R08-OAR-2017-0753; FRL-9973-45-Region 8]**

#### **Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Revisions to the Transportation Conformity Consultation Process**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by Colorado on May 16, 2017. The May 16, 2017 SIP revision addresses minor changes and typographical corrections to the transportation conformity requirements of Colorado's Regulation Number 10 "Criteria for Analysis of Conformity." These actions are being taken under section 110 of the Clean Air Act.

**DATES:** Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2017-0753 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to the public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information, the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the

web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Tim Russ, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6479, or [russ.tim@epa.gov](mailto:russ.tim@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### What should I consider as I prepare my comments for the EPA?

a. Submitting CBI. Do not submit CBI to the EPA through [www.regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

b. Tips for Preparing Your Comments. When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
2. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

## **II. Background**

The EPA is proposing approval of minor revisions to Colorado's Regulation Number 10 which is entitled "Criteria for Analysis of Conformity" (hereafter, "Regulation No. 10"). We note the most recent prior SIP revisions to Regulation No. 10, that we approved, occurred on March 4, 2014 (79 FR 12079).

The purpose of Regulation No. 10 is to address the transportation conformity SIP requirements of section 176(c) of the Clean Air Act (CAA) and 40 CFR 51.390(b). In addition, Regulation No. 10 also addresses the following transportation conformity SIP element requirements; 40 CFR 93.105 which formalizes the consultation procedures; 40 CFR 93.122(a)(4)(ii) which addresses written commitments to control measures that are not included in a Metropolitan Planning Organization's (MPOs) transportation plan and transportation

improvement program that must be obtained prior to a conformity determination; and 40 CFR 93.125(c) which addresses written commitments to mitigation measures that must be obtained prior to a project-level conformity determination<sup>1</sup>.

### **III. What was the State's Process to Submit a SIP Revision to the EPA?**

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to the EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state.

For the May 16, 2017 revisions to Regulation No. 10, the Colorado Air Quality Control Commission (AQCC) held a public hearing for those revisions on February 18, 2016. There were no public comments. The AQCC adopted the revisions to Regulation No. 10 directly after the hearing. This SIP revision became state effective on March 30, 2016 and was submitted by Dr. Larry Wolk, Executive Director of the Colorado Department of Public Health and Environment (CDPHE), and on behalf of the Governor, to the EPA on May 16, 2017.

We have evaluated the State's May 16, 2017 submittal for Regulation No. 10 and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. By operation of law under section 110(k)(1)(B) of the CAA, the State's May 16, 2017 submittal was deemed complete by the EPA on November 25, 2017.

### **IV. EPA's Evaluation of the State's May 16, 2017 Submittal**

---

<sup>1</sup> A conformity SIP includes a state's specific criteria and procedures for certain aspects of the transportation conformity process consistent with the federal conformity rule. A conformity SIP does not contain motor vehicle emissions budgets, emissions inventories, air quality demonstrations, or control measures. See EPA's *Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)* for further background: <https://nepis.epa.gov/Exe/ZyPDF.cgi/P1002W5B.PDF?Dockey=P1002W5B.PDF>.

The EPA has reviewed the revisions to Regulation No. 10 that were submitted by the State on May 16, 2017 and we are proposing to approve these revisions. We reviewed the State's submittal to assure consistency with the transportation conformity requirements in 40 CFR 51.390(b), that establish the requirements for conformity consultation SIPs and to the transportation conformity requirements in 40 CFR sections 93.105, 93.122(a)(4)(ii) and 93.125(c).<sup>2,3</sup> We also consulted our document "Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)," EPA-420-B-09-001, dated January 2009.<sup>4</sup>

Our review regarding the revisions to Regulation No. 10 included the following:

- (a) The Title to Regulation No. 10. The revisions to the title included typographic changes to the title such as capitalization, use of lower case letters to remove capitalization of particular words and inclusion of a sentence regarding the editor's notes at the end of the regulation. Except for the addition of the sentence regarding the editor's notes, we otherwise note that only typographic changes were performed and no words or terms were added or deleted.
- (b) Section II. "Definitions." The EPA has reviewed and finds acceptable the revisions and clarifications that the state made to the definition of "*Routine Conformity Determination*." These revisions to Regulation No. 10 were designed to streamline the transportation conformity process by allowing the CDPHE to provide concurrence for a wider range of routine transportation conformity determinations without the need for a public hearing before the AQCC. This change to the routine conformity determination definition will reduce the burden on the AQCC, the CDPHE and transportation MPOs while continuing to ensure that air quality transportation conformity requirements are met. In addition, we note that the changes also include the provision

---

<sup>2</sup> "40 CFR 93 Transportation Conformity Rule PM<sub>2.5</sub> and PM<sub>10</sub> Amendments; Final Rule," March 24, 2010, 75 FR 14260.

<sup>3</sup> "40 CFR 93 Transportation Conformity Rule Restructuring Amendments; Final Rule," March 14, 2012, 77 FR 14979.

<sup>4</sup> See: <http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf>

that notwithstanding this general definition, the CDPHE or the AQCC may, at its discretion, request that any transportation conformity determination be reviewed by the AQCC. The EPA notes that such a review may also include a public hearing before the AQCC.

(c) Typographical corrections were made to the following sections: Section II, definition of *Review Team*; Section III, subsections III.A.2, III.A.3, III.B.1.a, III.C.1.b.(2), III.C.1.g and III.F.3.

(d) Section VI. “Statements of Basis, Specific Statutory Authority, and Purpose.” The EPA notes that the changes to this section VI in the State’s regulation merely provide information for the State regarding the SIP revision and are not necessary for an approvable Transportation Conformity Consultation SIP element whose purpose is to meet the requirements of CAA section 176(c)(4)(E) and 40 CFR 51.390. Therefore, the EPA is not taking any action on this section.

## **V. Summary of the EPA’s Proposed Action**

For the reasons discussed in section IV above, and under CAA section 110(k)(3), the EPA is proposing to approve the Regulation No. 10 revisions to Section II to the definition of “*Routine Conformity Determination*.” In addition, we are proposing approval of the typographic corrections to the Regulation No. 10 title, to Section II and to the Section III subsections III.A.2, III.A.3, III.B.1.a, III.C.1.b.(2), III.C.1.g and III.F.3.

The EPA notes that revisions were also made to Colorado’s Regulation No. 10, section VI “Statements of Basis, Specific Statutory Authority, and Purpose”; however, the EPA is not taking any action on the revisions to this section. The revisions to section VI are only informational in nature for the State and do not require federal approval into the SIP.

## **VI. Consideration of Section 110(1) of the Clean Air Act**

Under section 110(l) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and Reasonable Further Progress toward attainment of the National Ambient Air Quality Standards (NAAQS), or any other applicable requirement of the CAA. The EPA proposes to determine that the portions of Regulation No. 10 that we are acting on are consistent with the applicable requirements of the CAA. Furthermore, these portions do not relax any previously approved SIP provision; thus they do not otherwise interfere with attainment and maintenance of the NAAQS. In addition, section 110(l) of the CAA requires that each revision to an implementation plan submitted by a state shall be adopted by the state after reasonable notice and opportunity for public hearing. On February 18, 2016, the AQCC held a public hearing and the AQCC adopted the revisions to Regulation No. 10 directly after the hearing. This SIP revision became state effective on March 30, 2016. Therefore, the CAA section 110(l) requirements are satisfied.

## **VII. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the approval of portions of Regulation No. 10 as submitted by the State of Colorado and as discussed above in section IV of this preamble. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## **VIII. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);



- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, and Volatile Organic Compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: January 24, 2018.

---

Debra H. Thomas,  
Acting Regional Administrator,  
Region 8.